

1 A Yes, I am.

2 Q Now, I asked you this exact same
3 question that I just asked you just then, and
4 let me read it for you. Your view of the set
5 that is competing with each other really has
6 to do with what demographic they are competing
7 for. Is that fair? Do you see my question,
8 sir?

9 A I do.

10 Q And when I asked you that, your
11 answer was, "In general, yes, but there are
12 advertisers who, for reasons I think I
13 articulated before, are looking for sport-
14 specific based on relationships they may have,
15 and, therefore, are just looking for the NFL
16 or the NBA or the NHL for that matter." Did
17 I read that correctly, sir?

18 A Yes, you did.

19 Q Thank you, sir. Now, you believe
20 that Golf Channel competes with networks that
21 deliver a similar audience in terms of men,
22 correct, sir?

1 A Yes, I do.

2 Q And you believe that The Golf
3 Channel competes with networks that skew a bit
4 towards male, don't you, sir?

5 A I have indicated that.

6 Q Now, in your report I noticed you
7 mostly compare Golf and Tennis. You don't
8 focus very much on Versus, correct, sir?

9 A I looked heavily at Golf and
10 Tennis, that's correct.

11 Q And --

12 A Or I tried to.

13 Q You didn't examine the
14 similarities between Versus and Tennis at all,
15 did you, sir?

16 A Well, I looked at it to some
17 degree, not to the same extent as I looked at
18 Golf and Tennis.

19 Q But you would agree that even on
20 multi-sport networks advertisers often are
21 buying a particular sport, correct, sir?

22 A They usually will build a schedule

1 around a particular live sport, yes.

2 Q So if they buy the audience to a
3 given sport, or they -- strike that.

4 It's sport-specific, wide sport-
5 specific, isn't that right, sir, the
6 advertising?

7 A Generally speaking, yes.

8 Q Now, speaking of competition, Mr.
9 Goldstein, you would agree that Tennis Channel
10 is similar to some of the ESPN networks, would
11 you not, sir?

12 A How would you compare them?

13 Q Well, sir, I -- at page 180 of
14 your deposition, Transcript 19 to 21 --

15 A Hang on. 180, you said? I'm
16 sorry.

17 Q 180, sir.

18 A Yes.

19 Q Starting at line 8, I asked you
20 sir, "What network do you think is closest,
21 generally, to The Tennis Channel?" Mr.
22 Toscano objected. You answered, "Some of the

1 news channels may be closest to The Tennis
2 Channel, cable news, some of what may be
3 called lifestyle networks may be close to
4 Tennis Channel. In a way, I would view them
5 perhaps a little bit more than the sports, but
6 probably some of the ESPN networks are in some
7 way, shape, or form reasonably close to The
8 Tennis Channel."

9 A Okay.

10 Q And I ask you why the news
11 channel, and you said they were a bit more
12 male.

13 A Well, they tend to skew, from a
14 demographic point of view, similar to the way
15 The Tennis Channel does. There are other
16 channels that do that as well.

17 I -- you know, in terms of my ESPN
18 reference, I certainly was not thinking about
19 ESPN, the channel. It might have been
20 something along the lines of an ESPN2 or one
21 of the other ESPN networks.

22 Q Yes, Your Honor. Yes, Mr.

1 Goldstein, I'm sorry. The ESPN channels are
2 multi-sport, are they not, sir?

3 A Yes, they are.

4 Q Okay. And Versus competes with
5 the ESPN networks, does it not, sir?

6 A I'm sure they do.

7 Q Now, Tennis has sponsorships and
8 marketing partnerships like the other major
9 sports, correct, sir?

10 A Yes, they do.

11 Q Like Mercedes Benz for the U.S.
12 Open?

13 A Yes.

14 Q And Roger Federer and Gillette?

15 A Yes.

16 Q Mr. Federer is a well-known tennis
17 star?

18 A He is.

19 Q And Gillette is a brand primarily
20 targeted at men, is it not, sir?

21 A Primarily, yes.

22 Q It has marketed itself as being at

1 the heart of men's grooming for over a hundred
2 years. Does that sound right to you, sir?

3 A Sounds right.

4 Q Mr. Federer has an endorsement
5 deal with Gillette for men's shaving and
6 grooming products, doesn't it, sir?

7 A I believe he does.

8 Q Now, you've also noted in your
9 report -- you say that "Tennis has less
10 audience appeal because its competitive stars
11 are not American. And American fans and
12 viewers like to root for American athletes."
13 Do you recall that, sir?

14 A I believe that to be true.

15 Q Okay. So let's look at this for a
16 second. Would you agree that Mr. Federer is
17 a household name in advertising, sir?

18 A I don't know that I would call him
19 a household name, but he is certainly a highly
20 recognizable name.

21 Q And what about Rafael Nadal? Do
22 you consider him a highly recognizable name?

1 A To a much lesser degree than Mr.
2 Federer.

3 Q All right. And let's look at it
4 on the golf side. There is Mr. Woods.

5 A Yes.

6 Q And who do you think is next?

7 A In terms of American athletes,
8 probably Mr. Mickelson.

9 Q Okay. And of the top -- say,
10 other than Mr. Mickelson, of the top four
11 golfers, other than Mr. Mickelson, are any of
12 them American, sir?

13 A No, they're not, to my knowledge.

14 Q Okay.

15 JUDGE SIPPEL: Is that Mickelson
16 with an M-I-C-K?

17 THE WITNESS: Yes, Phil Mickelson.

18 JUDGE SIPPEL: There used to be a
19 Nicholson, but --

20 BY MR. PHILLIPS:

21 Q The LPGA tour, sir, does it have
22 any prominent American women on it?

1 A I believe it does, but I can't
2 come up with a name. I believe an American
3 just won one of their senior tournaments.

4 Q Okay. And with tennis, are there
5 any well-known American tennis stars with
6 women's tennis?

7 A Well, given the fact that both
8 Williams sisters don't seem to have competed
9 in quite a while, beyond those two, and
10 unfortunately Mr. Roddick's fall from the top
11 tier of tennis, from American stars, there
12 don't seem to be very many that come quickly
13 to mind.

14 Q Well, are you saying that you
15 don't believe the Williams -- Venus and Serena
16 Williams are effective advertisers?

17 A I didn't say that. I said in
18 terms of their current popularity.

19 Q Well, in fact, would it surprise
20 you if I told you that Venus and Serena
21 Williams were first and third in the most
22 effective endorsers among active athletes?

1 A No, it would not.

2 Q In fact, let me -- if I may, Your
3 Honor, I'd like to just show you this exhibit.
4 May I approach?

5 JUDGE SIPPEL: Yes, you may.

6 MR. PHILLIPS: It's Tennis Channel
7 Exhibit 99.

8 JUDGE SIPPEL: Thank you. Is this
9 in evidence?

10 MR. PHILLIPS: It is, indeed, Your
11 Honor. If I go much further, I'm not going to
12 be able to say that so confidently.

13 BY MR. PHILLIPS:

14 Q Now, Mr. Goldstein, do you know
15 what this report --

16 MR. CARROLL: Can I just say for
17 the record I'd really love a pair of those
18 glasses on the cover of this document.

19 MR. PHILLIPS: You know, Mr.
20 Carroll, I'll try to arrange that for you.

21 (Laughter.)

22 BY MR. PHILLIPS:

1 Q Mr. Goldstein, are you familiar
2 with this exhibit?

3 A Yes, I am.

4 Q This is put out by Nielsen,
5 correct?

6 A It is.

7 Q And this report is the state of
8 the media year in sports for just last year,
9 correct, sir?

10 A Yes, and it's interesting it
11 doesn't include tennis at all.

12 Q Well, if you look at page 2 of the
13 report, page numbered 2 on the bottom left-
14 hand side -- I think it's like the fourth page
15 -- there is a Nielsen e-poll en-score
16 endorsement score, do you see that, sir?

17 A I do.

18 Q And I'm just looking at the most
19 effective endorsers there. And three of the
20 five on the women's side are tennis players,
21 are they not?

22 A Yes, they are.

1 Q Now, I don't know, but I don't see
2 any effective endorsers down here from golf,
3 but maybe I'm just not familiar anymore.

4 A There aren't.

5 Q Okay.

6 A Again, I do find it interesting
7 that in every major sport --

8 Q Excuse me. I'm sorry, Mr.
9 Goldstein.

10 A I'm sorry.

11 JUDGE SIPPEL: I don't think there
12 is a question pending.

13 BY MR. PHILLIPS:

14 Q I don't think there is a question
15 pending.

16 A I apologize.

17 JUDGE SIPPEL: You have to wait
18 until he asks a question.

19 THE WITNESS: I'm sorry, Your
20 Honor.

21 JUDGE SIPPEL: He has to listen to
22 your answer, too.

1 BY MR. PHILLIPS:

2 Q Mr. Goldstein, the advertisers
3 care about absolute numbers of viewers,
4 correct, sir?

5 A They care about many different
6 things, and numbers of viewers is one of them.

7 Q A very important one, correct,
8 sir?

9 A It can be, yes.

10 Q Yes. I mean, you want your
11 advertisement to be seen by as many people as
12 possible, isn't that right, sir?

13 A At an appropriate cost.

14 Q All other things being equal,
15 greater distribution is better than lesser
16 distribution, wouldn't you agree, sir?

17 A Generally speaking, yes.

18 Q Now, just because a network
19 attracts women viewers, it doesn't mean that
20 it doesn't attract men viewers, does it?

21 A I never said that it did.

22 Q Okay. I mean, it's not a zero-sum

1 gain, is it, sir?

2 A No, it's not.

3 Q Now, I also want to focus on one
4 other thing. We have seen some things in this
5 case about where Tennis Channel compares
6 itself to Golf Channel and marks its
7 distinctions. Now, you have heard a lot of
8 sales pitches, correct, Mr. Goldstein?

9 A Yes, sir.

10 Q You are familiar with the ad
11 campaign between the Apple guy and the PC guy?

12 A Yes.

13 Q And the Mac guy compares himself
14 to the PC guy in those commercials and brings
15 out the distinctions between the two, right?

16 A Yes, he does.

17 Q Now, do you think Macs compete
18 with PCs?

19 A Yes, I do.

20 Q Bear with me, Mr. Goldstein. I'm
21 just -- I'm looking through this, and you have
22 already given me some of it. And it's late in

1 the afternoon after six days of this, so I'm
2 trying to spare everybody.

3 Now, Mr. Goldstein, you would
4 agree with me that sporting event coverage,
5 live event sports, that are aired on the
6 weekends is more valuable than -- from an
7 advertiser's perspective than event coverage
8 on weekdays during the working day, correct,
9 sir?

10 A For the most part.

11 Q And as a general matter, golf
12 coverage on the weekends would be more
13 expensive for the same product than golf
14 coverage during the weekdays during the work
15 week, correct, sir?

16 A In general, that's correct.

17 Q All right. Because more people
18 can watch live sports on the weekend than they
19 can during the work week, correct, sir?

20 A So the pricing would be different.

21 Q You talked about the Phoenix Open
22 in your report, and I think you mentioned it

1 again here.

2 JUDGE SIPPEL: Is that a golf or a
3 tennis --

4 MR. PHILLIPS: That's tennis -- I
5 mean, golf. I'm sorry.

6 JUDGE SIPPEL: That's golf, yes.

7 BY MR. PHILLIPS:

8 Q You watched the Phoenix Open, the
9 golf tournament, correct, sir?

10 A Parts of it, yes.

11 Q What channel was that on?

12 A Phoenix? It was either CBS or
13 NBC. I don't remember which one.

14 Q It wasn't on -- you didn't watch
15 it on The Golf Channel, did you?

16 A I actually watched -- no, I'm
17 sorry, I watched -- I don't recall.

18 Q Well, you watched it -- I believe
19 you told me you watched it on the weekend,
20 didn't you, sir?

21 A I might have watched it before it
22 went on the network, because golf coverage has

1 some coverage immediately prior to the network
2 coverage.

3 Q And your understanding is that
4 Golf Channel goes off the air in terms of live
5 coverage when the network coverage starts,
6 true, sir?

7 A They do, in fact.

8 Q So the later rounds, the more
9 valuable rounds, are covered by the networks,
10 aren't they, sir?

11 A That's correct, right.

12 Q And I believe you told me that you
13 watched on Saturday and Sunday, is that
14 correct, sir?

15 A If that's what I said, then yes.

16 Q And for the most part, The Golf
17 Channel's coverage would have been on Thursday
18 and Friday, correct, sir?

19 A They probably also had Saturday
20 and Sunday, but yes.

21 Q But not during the part that the
22 networks were showing.

1 A Not simultaneous, no.

2 Q Right. Because, again, once the
3 networks come on, The Golf Channel has to go
4 off in terms of live coverage, correct?

5 A That's correct.

6 Q All right. And you know that you
7 didn't watch the early rounds that were on The
8 Golf Channel on Thursday and Friday because
9 you were at work on one of those days, weren't
10 you, sir?

11 A Thursday probably, Friday probably
12 not.

13 Q But you didn't -- that Friday you
14 didn't watch The Golf Channel, did you?

15 A As I said, I don't recall.

16 Q Now, would you agree with me that
17 there is a fair amount of coverage of golf on
18 broadcast television?

19 A I have indicated that there is
20 quite a bit.

21 Q And there is not as much tennis on
22 broadcast television, correct, sir?

1 A Tennis coverage on network
2 television is very scarce.

3 Q And so would you agree with me
4 that there is more golf than tennis on
5 television generally?

6 A I haven't done that analysis, so I
7 don't know that I can agree with that.

8 Q Now, and as I take it, what The
9 Golf Channel shows is -- well, let me back up
10 a second. Golf tournaments tend to be how
11 long, how many days?

12 A Four days.

13 Q Right. And the golf tournament --
14 The Golf Channel shows the first two days,
15 correct?

16 A Correct.

17 Q And then they show that -- sort of
18 the morning or early afternoon section of the
19 weekend before the networks turn on, correct,
20 sir?

21 A I think it's usually about two
22 hours in the early afternoon immediately

1 preceding the network coverage. So let's say
2 one to three.

3 Q Now, if I were a viewer that
4 wanted to watch golf, I would want to -- I
5 would need The Golf Channel only if I were a
6 pretty serious fan and wanted to see those
7 early rounds, correct, sir?

8 A I think people watch golf because
9 they want to watch the people who are
10 participating.

11 Q But I've got a lot of golf on
12 television. If I wanted to watch those early
13 rounds, I would need The Golf Channel,
14 wouldn't I?

15 A But the viewership doesn't seem to
16 be adversely impacted by the fact that there
17 is much golf as you seem to indicate.

18 Q Well, sir, I'm -- here's my
19 question for you, though. If I wanted to
20 watch those early rounds of golf, if I'm a
21 pretty serious golf viewer, I would need to
22 get The Golf Channel, wouldn't I?

1 A Yes, you would.

2 Q And so I might be willing to pay
3 the extra \$5 or \$6 a month to get it if it
4 were on a sports tier, correct, sir?

5 A That is not what I'm here to talk
6 about.

7 Q I just wondered if you agreed with
8 me.

9 A Okay. So I -- you know, I don't
10 know what -- and nor would I have done any
11 analysis to try and find out what people would
12 or wouldn't pay for.

13 Q Now, you stated that the lack of
14 overlap between Golf and Tennis Channel in the
15 advertisers demonstrate that advertisers view
16 the networks distinctly. Do you remember
17 that, sir? It's in your written report.

18 A I said it, and I said it again
19 today, I believe.

20 Q And if there was a significant
21 overlap between networks, your opinion might
22 change, correct, sir?

1 A I'd certainly take a look at it.

2 Q Right. I think you told me at
3 your deposition that if there were a 50
4 percent overlap that you would be surprised
5 and you would rethink your opinion, wouldn't
6 you?

7 A I would certainly take a look at
8 it.

9 Q Well, let me show you Mr. Herman's
10 testimony.

11 May I approach, Your Honor?

12 JUDGE SIPPEL: Please do.

13 BY MR. PHILLIPS:

14 Q And, in particular, what I'd
15 really would like to look at is the testimony
16 as Exhibit C.

17 JUDGE SIPPEL: This is already in?

18 MR. PHILLIPS: This is already in
19 in Exhibit 15, Your Honor.

20 JUDGE SIPPEL: Oh, I thought it
21 was in a different -- well, what --

22 MR. PHILLIPS: It's Exhibit C to

1 Exhibit 15.

2 JUDGE SIPPEL: Now, we're back in
3 this testifying about testimony. What are you
4 doing to ask? What are you trying to get from
5 the witness on this?

6 MR. PHILLIPS: Well, he -- the
7 witness has said that there were a 50 percent
8 overlap. He'd be surprised, and he'd rethink
9 his testimony, so I want to take him up on
10 that proposition, Your Honor.

11 JUDGE SIPPEL: Okay. Why don't
12 you just ask him straight out then.

13 MR. PHILLIPS: Well, I'm pointing
14 to Exhibit C here --

15 JUDGE SIPPEL: Exhibit C of 15?

16 MR. PHILLIPS: Of 15, Exhibit C of
17 15.

18 BY MR. PHILLIPS:

19 Q Mr. Goldstein, this is Tennis
20 Channel's top advertisers, and it also tells
21 where else they bought ads. Do you see the
22 chart?

1 A Yes.

2 Q And if you look at the notes down
3 at the bottom, it notes that 77 percent, all
4 but seven of Tennis Channel's top 30 national
5 ad accounts also bought the Golf Channel. Do
6 you see that line?

7 JUDGE SIPPEL: Also bought the
8 what channel?

9 MR. PHILLIPS: Also bought the
10 Golf Channel. In other words, Your Honor, 77
11 percent of Tennis Channel's top advertisers
12 also bought ads on the Golf Channel.

13 THE WITNESS: Was this in a given
14 period of time, a set period of time, or is
15 this over an extended period of time?

16 MR. PHILLIPS: No, for the year
17 2010, sir.

18 THE WITNESS: Okay. I have not
19 seen this before.

20 BY MR. PHILLIPS:

21 Q Well, you're getting to my
22 question. You note that the third note down

1 here says that 60 percent, all but 12 of the
2 advertisers of Tennis Channel's top 30
3 national ad accounts also bought Versus. Do
4 you see that, sir? Do you see where it says
5 that?

6 A Yes, I do.

7 Q Okay. You haven't seen this
8 document before have you, sir?

9 A I don't believe so.

10 Q And you'd never considered these
11 facts before, had you, sir?

12 A Considered what facts?

13 Q The facts that I just read to you.

14 A Well, I have seen overlap charts
15 which led me to the conclusion that I stated
16 earlier. Okay?

17 Q But you --

18 A I would like to -- I'd, frankly,
19 like the opportunity to really dig into this
20 and look at it the way I was able to earlier.

21 Q I'm more than happy for you to,
22 sir, but I just wanted to make the point that

1 in coming to your earlier conclusion, you
2 hadn't seen this chart, or this overlap, had
3 you, sir?

4 A No.

5 Q Now, would you consider a 77
6 percent overlap a pretty substantial overlap,
7 sir?

8 MR. CARROLL: Your Honor, I'd just
9 note for the record, we cross-examined Mr.
10 Herman pretty aggressively on how this chart
11 was put together, but not --

12 MR. PHILLIPS: Excuse me. This is
13 inappropriate, Your Honor. This is --

14 JUDGE SIPPEL: Wait, wait, wait,
15 wait. What's the objection?

16 MR. CARROLL: The exhibit he's
17 using from this expert, his expert, he's
18 making representations about what that exhibit
19 shows. Our side doesn't agree with that, and
20 this witness is not in a position to know any
21 of that.

22 JUDGE SIPPEL: Try again.

1 MR. PHILLIPS: Your Honor, I just
2 wanted to cut Mr. Carroll off because I didn't
3 want him to be suggesting reasons to this
4 witness of what he may find good or bad about
5 this particular chart. The cross-examination
6 they did of Mr. Herman stands for what it is,
7 sir.

8 JUDGE SIPPEL: Well, I don't think
9 that we -- was this witness in the courtroom
10 for that --

11 MR. PHILLIPS: He was -- I don't
12 know whether he was or not. Were you for Mr.
13 Herman's testimony, sir?

14 THE WITNESS: No, I was not.

15 BY MR. PHILLIPS:

16 Q And I take it that no one on the
17 Comcast side gave you this testimony to read
18 between last Tuesday and today, sir.

19 A I'm trying to -- give me a moment,
20 because I read a lot of stuff. Okay? No, I
21 believe I did see Mr. Herman's testimony.

22 Q Well, if you saw his testimony,